

Remarks

This Application has been carefully reviewed in light of the Final Office Action (“Office Action”) mailed electronically on February 22, 2008. Applicant appreciates the Examiner’s consideration of the Application. Claims 1-24 remain pending. Applicant respectfully requests reconsideration and allowance of all pending claims.

Claim Objections

The Examiner objects to the use of the phrase “being operable to” in Claim 19. However, the Examiner provides no support in case law or statutes to suggest that use of the phrase “being operable to” is an appropriate ground for objection. Applicant respectfully contends that use of the phrase “being operable to” is proper. Furthermore, an informal search of the USPTO’s website returns over 150,000 issued patents with claims reciting the phrases “operable to” or “being operable to.” In short, use of the phrase “operable to” in claims is a practice that is both well accepted and currently supported by the PTO. To the extent that the Examiner intends to maintain this objection, Applicant respectfully requests the Examiner to provide support from applicable authority, such as case law or statutes.

Rejections under 35 U.S.C. § 103

The Examiner rejects Claims 1-2, 4-5, 7-8, 10-11, 13-14, 16-17, 19-20, and 22-23 under 35 U.S.C. § 103(a) as being unpatentable over *Vaidya*. Applicant respectfully traverses these rejections for the reasons discussed below.

In order to establish a *prima facie* case of obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *See* M.P.E.P. § 2143.

Claim 1 recites:

A method for maintaining security of a computer system, comprising:
determining an initial system certainty value for the computer system;
providing access to a database of signatures, each signature including a signature certainty value;
receiving data;
comparing the received data with the database of signatures;
increasing the system certainty value if the received data does not match a signature in the database;
decreasing the system certainty value if the received data matches a signature in the database; and

filtering the data based on the system certainty value and the signature certainty value of a signature matching the received data.

Vaidya discloses a “signature inspection-based network intrusion detection system.” *Vaidya*, col. 2, lines 62-63. When data is addressed to a network object, an attack signature profile is processed to determine if the data is associated with a network intrusion. *Vaidya*, col. 3, lines 39-47. Although various types of attack signature profiles may be used, the Examiner focuses on the use of a “timer/counter based attack signature profile.” *Office Action*, pg. 5. Under this profile, if “an event has occurred a threshold number of times within a predetermined time interval . . . [then] a network intrusion has been detected.” *Vaidya*, col. 8, lines 16-21, 36-38. Applicant respectfully submits that *Vaidya* fails to disclose, teach, or suggest each and every element of Claim 1.

For example, Applicant respectfully contends that *Vaidya* fails to disclose or suggest “increasing the system certainty value if the received data does not match a signature in the database” or “decreasing the system certainty value if the received data matches a signature in the database.” The Examiner admits that *Vaidya* fails to explicitly disclose these limitations. *Office Action*, pg. 4. Instead, the Examiner claims that the timer/counter based attack signature profile of *Vaidya* suggests these limitations “for the purposes of determining whether a particular event has occurred a threshold number of times.” *Office Action*, pg. 5. Applicant traverses this statement and respectfully contends that the Examiner is mischaracterizing the limitations of Claim 1. Claim 1 encompasses either “increasing the system certainty value” or “decreasing the system certainty value” depending on the received data. This does not merely determine whether a particular event has occurred a threshold number of times.

Furthermore, the Examiner states that, in *Vaidya*, “it is suggested that the threshold may be set/selected accordingly, which provides suggestion to it being adjustable (i.e. increased/decreased).” *Office Action*, pg. 9 (emphasis added). Applicant respectfully points out that *Vaidya* discloses a “preselected threshold.” *Vaidya*, col. 4, line 26 (emphasis added). Applicant respectfully contends that this preselection fails to disclose, teach, or suggest the threshold being adjustable after comparing the received data with a database of signatures. Additionally, when the timer/counter attack signature profile is used, *Vaidya* discloses that no action is taken when an incoming expression fails to match the signature. See *Vaidya*, col. 12, lines 23-26. Applicant respectfully contends that the Examiner’s use of suggestions

within suggestions appears to be reliance on hindsight to recreate the limitations of Claim 1. “However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” M.P.E.P. § 2142. For at least these reasons, Applicant respectfully contends that *Vaidya* fails to disclose, teach, or suggest each and every limitation of Claim 1.

Claims 2, 4, and 5 depend from Claim 1 and incorporate all the limitations thereof. As such, Applicant respectfully requests that the rejections of Claims 1, 2, 4, and 5 be withdrawn.

Similar to Claim 1, Claims 7, 13, and 19 include elements directed to “increasing the system certainty value if the received data does not match a signature in the database” and “decreasing the system certainty value if the received data matches a signature in the database.” Thus, for at least the reasons discussed above with regard to Claim 1, Applicant respectfully submits that the rejections of Claims 7, 13, and 19 are improper. Claims 8, 10, and 11 depend from Claim 7 and incorporate all the limitations thereof. Claims 14, 16, and 17 depend from Claim 13 and incorporate all the limitations thereof. Claims 20, 22, and 23 depend from new Claim 19 and incorporate all the limitations thereof. As such, Applicant respectfully requests that the rejections of Claims 7-8, 10-11, 13-14, 16-17, 20, and 22-23 be withdrawn.

The Examiner rejects Claims 3, 6, 9, 11, 15, 18, 21, and 24 under 35 U.S.C. § 103(a) as being unpatentable over *Vaidya* in view of *Moran*. Applicant respectfully traverses these rejections for the reasons discussed below.

Claims 3 and 6 depend from Claim 1, and incorporate all the limitations thereof. Claims 9 and 11 depend from Claim 7 and incorporate all the limitations thereof. Claims 15 and 18 depend from Claim 13 and incorporate all the limitations thereof. Claims 21 and 24 depend from Claim 19 and incorporate all the limitations thereof. As discussed above, *Vaidya* fails to teach all of the elements of Claims 1, 7, 13, and 19. *Moran* fails to overcome these deficiencies. Therefore, Applicant respectfully requests that the rejections of Claims 3, 6, 9, 11, 15, 18, 21, and 24 be withdrawn for at least the same reasons as discussed above with regard to their respective base claims.

No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the *Vaidya* and *Moran* references. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the obviousness rejections.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicant respectfully requests full allowance of all pending claims.

Applicant believes that no fee is due. However, the Commissioner is hereby authorized to charge any fee or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If the Examiner believes a telephone conference would advance prosecution of this case in any way, the Examiner is invited to contact Luke K. Pedersen, Attorney for Applicant, at the Examiner's convenience at (214) 953-6655.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicant



Luke K. Pedersen
Reg. No. 45,003

Date: 4/22/08

CORRESPONDENCE ADDRESS:

Customer Number:

05073